

**Kelvin Chan Chee Khuen v
Tan Kim Soon & Co**

HIGH COURT (SHAH ALAM) — ORIGINATING PETITION NO 26-3 OF
1999

LOW HOP BING J

9 AUGUST 1999

Legal Profession — *Remuneration* — *Bill of costs* — *Lump sum bill rendered* — *Taxation of bill at client's request* — *Whether client had to undertake to pay for taxed costs* — *Whether agreement to fees precluded taxation of bill* — *Legal Profession Act 1978 ss 126(1) & 130(1)*

The petitioner was the Managing Director of a company, petitioning on behalf of the company, who had engaged the respondent, a firm of solicitors, to obtain an interim injunction and damages in a civil suit. Upon obtaining the interim injunction, the petitioner paid the respondent RM50,000 for work done till that stage. The petitioner discharged the respondent from acting for them in the suit due to differences between them, upon which the respondent sent the petitioner a further bill dated 27 August 1998 for RM42,000. The respondent also sent a bill of RM205,000 for fees and RM15,000 for disbursements for two appeals which yet to be filed and for full trial in the High Court. The petitioner denied owing the respondent the fees and claimed that the fees agreed to up to the conclusion of the interim injunction was only RM50,000 and a further RM50,000 was for full trial to the conclusion of the suit until judgment was given by the court. The petitioner also wrote to the respondent requesting for them to hand over all documents and files in connection with the suit to their new solicitors and undertook to pay the bill after it had been assessed or taxed by the court. The petitioner then filed this petition of course under s 130 of the Legal Profession Act 1976 ('the LPA') for an order that the respondent deliver to the petitioner within 14 days a bill of costs for work done by the respondent and that the bill be referred to the registrar to be taxed. The respondent claimed that as both parties had their own version of the fees agreed to, it was only fair for the bill to be taxed by the court and the petitioner undertook to pay the taxed cost. The respondent raised a preliminary objection that the petitioner had not given an undertaking to pay the taxed costs under s 129 of the LPA and that the petitioner could not have filed the petition in his personal capacity. On the merits, the respondent submitted that the agreed fee for obtaining the interim injunction was RM90,000; therefore, there was no question of the petitioner obtaining the order for taxation of the fees.

Held, allowing the petition:

- (1) The facts clearly showed that the petitioner had undertaken to pay the taxed costs and, in so doing, had sufficiently complied with the requirement of s 129 of the LPA in relation of the petitioner's

- A undertaking to pay the amount of the bill of costs to the respondent when taxed (see p 446A).
- (2) The contention by the respondent that the petitioner had no capacity to file the petition was devoid of merits as the petition filed and the undertaking given by the petitioner were made on behalf of the company as Managing Director of the company and not in his personal capacity. As Managing Director of the company, the petitioner had every authority to file the petition for his company (see p 446C–D).
- B
- C (3) Sections 126(1) and 130(1) of the LPA cumulatively empowered the court to make an order for taxation of a solicitor's bill of costs and this petition was by way of a petition of course which fell squarely within the provisions of ss 126(1) and 130(1). Further, the bill sent by the respondent was a lump sum bill and the petitioner as the person chargeable was entitled to file a petition in court for an order that the bill of the respondent be taxed by the court particularly where there was nothing in writing regarding fees or the bill of costs which the petitioner was requesting was for an itemized bill. And as the petitioner had applied to the court by way of petition within six months, ss 126(1) and 130(1) had been complied with by the petitioner (see pp 446I–447B, I).
- D

E **[Bahasa Malaysia summary]**

- F Pempetisyen merupakan Pengarah Urusan sebuah syarikat, mempetisyen bagi pihak syarikat tersebut, yang telah mengambil responden, sebuah firma guaman, untuk memperoleh satu injunksi interim dan ganti rugi di dalam satu kes guaman sivil. Setelah memperoleh injunksi interim tersebut, pempetisyen telah membayar responden RM50,000 untuk kerja yang telah dilakukan setakat peringkat itu. Pempetisyen telah menamatkan perkhidmatan responden daripada bertindak untuk mereka di dalam guaman tersebut atas sebab perbezaan antara mereka, di mana responden kemudiannya telah menghantar pempetisyen satu bil seterusnya bertarikh 27 Ogos 1998 untuk jumlah RM42,000. Responden juga telah menghantar bil berjumlah RM205,000 untuk yuran dan RM15,000 untuk bayaran pendahuluan bagi dua rayuan yang masih belum difailkan dan untuk perbicaraan penuh di Mahkamah Tinggi. Pempetisyen menafikan berhutang dengan responden yuran tersebut dan mendakwa bahawa yuran yang dipersetujui setakat pembuatan persetujuan injunksi interim tersebut adalah hanya RM50,000 dan seterusnya RM50,000 lagi adalah untuk perbicaraan penuh tentang pembuatan guaman sehingga penghakiman diberikan oleh mahkamah. Pempetisyen juga telah menulis kepada responden memohon daripada mereka agar menyerahkan semua dokumen-dokumen dan fail-fail berkaitan dengan guaman untuk ditaksir atau dicukaikan oleh mahkamah. Pempetisyen kemudiannya telah memfailkan petisyen 'of course' di bawah s 130 Akta Profesyen
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- H
- I

Undang-Undang 1976 ('APU') untuk satu perintah agar responden menyerahkan kepada pempetisyen dalam tempoh 14 hari satu bil kos bagi kerja yang telah dibuat oleh responden dan agar bil tersebut dirujuk kepada pendaftar untuk dikenakan cukai. Responden mendakwa bahawa memandangkan kedua-dua pihak mempunyai versi mereka sendiri tentang yuran yang dipersetujui, adalah adil sekali untuk bil tersebut dikenakan cukai oleh mahkamah dan pempetisyen telah mengakujaji untuk membayar kos yang dicukaikan. Responden telah menimbulkan bantahan awal bahawa pempetisyen telah tidak mengakujaji untuk membayar kos yang dicukaikan itu di bawah s 129 APU dan bahawa pempetisyen tidak mungkin telah memfailkan petisyen tersebut di dalam kapasiti beliau sendiri. Berdasarkan merit tersebut, responden telah menghujahkan bahawa yuran yang dipersetujui untuk memperolehi injunksi interim tersebut adalah RM90,000; justeru itu, persoalan tentang pempetisyen memperolehi perintah untuk pencukaian yuran tersebut tidak timbul.

Diputuskan, membenarkan petisyen tersebut:

- (1) Fakta-fakta dengan jelas menunjukkan bahawa pempetisyen telah mengakujaji untuk membayar kos yang dicukaikan dan, dengan berbuat demikian, telah memenuhi secukupnya keperluan s 129 APU berhubung dengan akujaji pempetisyen untuk membayar jumlah bil kos tersebut kepada responden setelah dikenakan cukai (lihat ms 446A).
- (2) Pendapat responden bahawa pempetisyen tiada kapasiti untuk memfailkan petisyen tersebut tidak mempunyai merit kerana petisyen yang difailkan dan akujaji yang diberikan oleh pempetisyen telah dibuat bagi pihak syarikat sebagai Pengarah Urusan syarikat tersebut dan bukan di dalam kapasiti peribadi beliau. Sebagai Pengarah Urusan syarikat tersebut, pempetisyen mempunyai segala kuasa untuk memfailkan petisyen tersebut untuk syarikat beliau (lihat ms 446C–D).
- (3) Seksyen-seksyen 126(1) dan 130(1) APU secara kumulatif memberi kuasa kepada mahkamah membuat perintah untuk pencukaian bil kos peguam dan petisyen ini yang melalui satu petisyen 'of course' adalah dengan nyata di bawah peruntukan ss 126(1) dan 130(1). Tambahan pula, bil yang dihantar oleh responden merupakan jumlah sekaligus bil tersebut dan pempetisyen sebagai orang yang telah dipertanggungjawabkan berhak untuk memfailkan petisyen di mahkamah untuk satu perintah agar bil responden ditetapkan oleh mahkamah terutamanya di mana tiada apa yang bertulis tentang yuran atau bil kos tersebut di mana pempetisyen telah meminta satu bil yang disenaraikan. Dan memandangkan pempetisyen telah memohon kepada mahkamah melalui petisyen di dalam tempoh enam bulan, ss 126(1) dan 130(1) telah dipenuhi oleh pempetisyen (lihat ms 446I–447B, I).]

A Notes

For cases on bill of costs, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1651-1656.

B Cases referred to

Berta Services Sdn Bhd v Makhanlall & Co [1989] 2 MLJ 269 (refd)

Tan Soo (F) v Freeman & Madge [1932] MLJ 42 (refd)

Thompson, Re (1885) 30 Ch D 441 (refd)

Tilleard, Re (1863) 32 Beav 476; 55 ER 187 (refd)

Vije & Co v Co-operative Central Bank Ltd [1991] 3 MLJ 432 (refd)

C *Yau Fioh Hua v Sykt Kilang Bata-Bata Chip Siah Sdn Bhd* [1998] 3 MLJ 753 (refd)

Legislation referred to

D Rules of the High Court 1980 O 59 r 24

Legal Profession Act 1976 ss 126(1), 129, 130(1), 132

Balwant Singh (Balwant Singh & Son) for the petitioner.

Chia Wen Chow (Chia Wen Chow & Associates) for the respondent.

Cur Adv Vult

E Low Hop Bing J:

PETITION AS A MATTER OF COURSE

F This is a petition of course under s 130 of the Legal Profession Act 1976 ('LPA') for an order, inter alia, that the respondent deliver to the petitioner within 14 days of the order herein a bill of costs for the work done by the respondent and that the bill be referred to the registrar to be taxed and settled with all the usual directions.

CIRCUMSTANCES OF THE CASE

G The petitioner is the Managing Director of Oriental Wealth (M) Sdn Bhd having its registered office at No 41A, Jalan Goh Hock Huat, 41400 Klang, Selangor Darul Ehsan and is petitioning on behalf of the said company. The petitioner had instructed the respondent Tan Kim Soon & Co a firm of solicitors to act for him and on behalf of the said company as plaintiff in the Shah Alam High Court Civil Suit No MT4-22-626-97 against three defendants viz RHB Bank Bhd, Ab Halim bin Mohyiddin and Ng Kim Tuck, for an interim injunction and for damages.

H The respondent obtained an injunction against the second defendant Ab Halim bin Mohyiddin and the third defendant Ng Kim Tuck.

I The fees allegedly agreed by the petitioner with the respondent was RM100,000 for the whole case until its final conclusion and judgment given by the court. The petitioner has paid a sum of RM50,000 to the respondent,

up to the stage of obtaining the interim injunction and including all attendances at meetings, discussions and advice given to the petitioner in connection with the said civil suit and all ancillary matters related to that case.

As there were differences and misunderstanding between the petitioner and the respondent, the petitioner discharged the respondent from acting further in that suit. The respondent then sent the petitioner a further bill dated 27 August 1998 for RM42,000.

The petitioner accordingly through his present solicitors M/s Balwant Singh & Son wrote a letter to the respondent dated 7 December 1998 informing them that the petitioner disputed the further bill and that the respondent may have the bill of costs taxed.

The respondent has meanwhile refused to hand over to the petitioner or his present solicitors all the files, pleadings, documents and papers in connection with the said suit despite many requests verbally and in writing.

The respondent had also sent a letter dated 27 August 1998 to the petitioner dated 10 July 1998 demanding a sum of RM205,000 for fees and RM15,000 for disbursements including the fees for two appeals which have yet to be filed and for full trial in the High Court.

On 12 August 1998, the petitioner replied to the above letter denying the fee owing and that the fees allegedly agreed, up to the conclusion of the interim injunction, was RM50,000 and a further RM50,000 for full trial and conclusion of the said suit until Judgment was given by the court.

The petitioner wrote a letter dated 1 September 1998 to the respondent to hand over to the petitioner's new solicitors all the documents and files in connection with the said suit and undertook to pay the bill after it has been assessed or taxed by the court.

The petitioner's new solicitors M/s Balwant Singh & Son sent a letter dated 17 December 1998 to the respondent stating that the petitioner disputed the fees claimed by the respondent and that the petitioner has paid RM50,000 for obtaining the interim injunction and that a further balance of RM50,000 was to be paid after the hearing and delivery of final judgment by the court.

SUBMISSION FOR THE PETITIONER

It was submitted for the petitioner that when the respondent managed to obtain the interim injunction, the respondent became greedy and wanted to get as much fees as possible, since the respondent thought that the respondent had done the petitioner a great favour by getting the interim injunction on 26 June 1998 although it was the respondent's duty to do his best for the petitioner. The fee demanded by the respondent was grossly excessive in proportion to the professional services rendered by the respondent. When the respondent sent the letter dated 10 July 1998 for RM220,000, the plaintiff felt that it was highly inconsistent of the respondent in demanding the fee from the petitioner.

A It was further submitted that both parties have their own version of the amount of fees allegedly agreed and so it is only just and fair for this court to order the respondent to have his bill taxed by the court. The petitioner has undertaken that the costs would be paid after it had been taxed by the court.

B SUBMISSION FOR THE RESPONDENT

The respondent submitted by way of preliminary objection that the petitioner has not given an undertaking to pay the taxed costs under s 129 of the LPA. It was then submitted that it is not correct for the petitioner to file the Petition in his personal capacity. It was also submitted that the court has no jurisdiction to order the refund of RM15,000 even after the bill of costs is taxed.

C On the merits of the petitioner, the respondent submitted that the agreed fee for obtaining the interim injunction was RM90,000 and so there is no question of the petitioner obtaining an order for taxation.

D DECISION OF THE COURT

Preliminary issue raised by the respondent

E Section 129 Legal Profession Act

This section reads as follows:

Petition by party liable for a bill of costs

F All petitions by a party chargeable with or liable for a bill of costs shall, unless the same has been already paid, contain a submission by the party to pay the amount of the bill of costs to the advocate and solicitor when taxed.

In considering whether the petitioner has complied with s 129, in particular reference to his undertaking to pay the amount of the bill of costs to the respondent when taxed, I note that the petitioner has in his letter dated 1 September 1998 (exh 4 of the petition) to the respondent given his undertaking to pay the costs after it has been taxed. Paragraph 10 of the petition which makes a specific reference to the said letter reads as follows:

G The petitioner wrote a letter to M/s Tan Kim Soon & Co dated 1 September 1998 and to hand over all the documents and files in connection with this said case to his solicitors and agreed to pay the bill after it has been taxed by the court as the petitioner has in fact paid more than the amount for which the petitioner has been billed.

H Further, para 11 of the petitioner refers to the letter dated 17 December 1998 sent by M/s Balwant Singh & Son to the respondent which again clearly states that the petitioner will pay the taxed costs as awarded by the court against the petitioner.

I Exhibit 4 is part and parcel of the petition which clearly states that the petitioner has undertaken to pay the taxed costs. This letter confirms the

undertaking given by the petitioner who has repeated it in para 10 of the petition. There has been no attempt by the petitioner eg in failing or omitting to state or refer to his undertaking to pay the taxed costs. In my judgment, the petitioner has sufficiently complied with the requirement of s 129 in relation to the petitioner's undertaking to pay the amount of the bill of costs to the respondent when taxed. A

Petitioner's capacity B

This petition is filed by Kelvin Chan Chee Khuen who is described as the Managing Director of Oriental Wealth (M) Sdn Bhd. At all times, the dealing in respect of the said suit was between the petitioner and the respondent. This was further confirmed in para 1 of the petition that the petitioner Kelvin Chan Chee Khuen is filing this petition on behalf of the plaintiff Oriental Wealth (M) Sdn Bhd as Managing Director of the said company. C

The undertaking given by the petitioner is given in his capacity as the Managing Director of the company and not in his personal capacity. As Managing Director of the said company, the petitioner surely has every authority to file the petition for his company. In the circumstances, the contention by the respondent that the petitioner has no capacity to file the petition is devoid of merits. D

Merits of the petition E

For the purposes of arriving at a conclusion in respect of the order prayed for in this petition, I am mindful of the application of ss 126(1) and 130(1) of the LPA.

Section 126(1) of the LPA provides as follows: F

An order for taxation of costs to be made within six months of delivery of bill of costs

- (1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery. G

Section 130(1) reads:

Order for delivery of solicitor's bill of costs by way of petition H

- (1) An order for the delivery of a solicitor's bill of costs, and for delivery up of any deeds, documents or other papers in the possession of the advocate and solicitor may, subject to any lien which such advocate and solicitor may have, and for the taxation of the bill when delivered, be obtained on a petition of course. I

Sections 126(1) and 130(1) cumulatively empower the court to make an order for taxation of a solicitor's bill of costs and this petition is by way of a

- A** petition of course which falls squarely within the provisions of ss 126(1) and 130(1). Further, the bill sent by the respondent is a lump sum bill and the petitioner as the person chargeable is entitled to file a petition in court for an order that the bill of the respondent be taxed by the court particularly where there is nothing in writing regarding fees or the bill of costs which the petitioner is requesting is for an itemized bill.

- B**
- In *Berta Services Sdn Bhd v Makhanlall & Co* [1989] 2 MLJ 269, a Singapore case, a solicitor sent his lump sum bill. The clients refused to pay and requested the solicitor to have the bill taxed by the court on a solicitor and client basis which the solicitor did. At p 272A-E left hand side column,
- C** Chan Sek Keong J (now Attorney-General of Singapore) referred to in *Re Thompson* (1885) 30 Ch D 441 which held that: 'When a solicitor sends in his bill, he gives the client to whom he sends it a right to have that bill taxed'. Again at p 274A-B, on the left hand column, the learned judge referred to *Re Tilleard* (1863) 32 Beav 476; 55 ER 187 where it was held that solicitors having submitted a bill of costs containing a lump sum item of
- D** £1,000 (which was found not enforceable on the ground that the agreement to pay the same was not in writing) were entitled to bring in for taxation a second bill containing the particulars of the charges set out in the lump sum bill so long as the charges did not exceed £1,000. In the case before me, there is also nothing in writing as regards the fee to paid to the respondent.

- E** In *Tan Soo v Freeman & Madge* [1932] MLJ 42 the existence of an oral agreement as to costs was denied. Thorne Ag CJ held, inter alia, that as happened in this matter, the parties had failed to establish the agreement, the matter would be referred to the taxing officer to tax their costs. The learned acting Chief Justice concluded that the members of the legal profession practising in the Federated Malay States have only one way of
- F** having their charges properly ascertained, and that is by way of taxation.

- In *Yau Jioek Hua v Sykt Kilang Bata-Bata Chip Siah Sdn Bhd* [1998] 3 MLJ 753, it was held that there was no agreement between the parties in respect of the solicitors' costs and therefore the persons chargeable is entitled to have the gross sum bill taxed within the meaning of s 132 of the
- G** LPA and O 59 r 24 of the Rules of the High Court 1980.

Further elucidation is provided by *Vije & Co v Co-operative Central Bank Ltd* [1991] 3 MLJ 432 at p 436A-B right hand column, where the following passage appears:

- H** Now, Part IX of the Legal Profession Act 1976 ('the Act') provides the procedures for disputing a solicitor's bill of costs. The party chargeable or the person liable to pay the costs, if he disputes the bill, has to obtain by petition an order for the taxation of the bill. By s 126(1), this has to be done within six months from the delivery of the bill.

- I** As the petitioner in instant case has applied to the court by way of petition within six months, ss 126(1) and 130(1) have been complied with by the petitioner.

Conclusion

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On the foregoing grounds, I make an order in prayer 12(a) and (d) of the petition in encl 1.

Petition allowed.

Reported by Chin En Tek

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